THE

Master of the Temple

As bad a *LAWYER*,

AS THE

Dean of Pauls

Is a *DIVINE*.

IN

A Letter *from a Gentleman of the* Temple, *to his* (quondam) *Tutor in* Oxford.

About the Law-Part of Dr. Sherlock's *modest Examination of the* Oxford *Decree.*

LONDON:

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A Letter *from a* Lawyer *in the* Temple, *to his* (quondam) *Tutor in* Oxford.

SIR,

THough it be ſome time ſince *I* left the *Univerſity*, yet my Obligations to it continue freſh upon me. *I* have ſtill (and ever ſhall have) the ſame Concern for its Honour and Intereſt, that I had when I was actually a *Member* there. In Truth, the *Socinians*, the *Tritheiſts*, and *Latitudinarians* both in Opinion and Practice, increaſe ſo faſt in this Town, that they frequently provoke

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a Wish for my Return thither. For, notwithstanding the Calumny and Reproach which Hereticks and Dissenters have cast upon that Seminary of Learning and Vertue, in Contempt of the Publick Opinion of the greatest part of the Christian World; yet I must declare, that I observ'd Probity, Good manners, and Religion, more Visible and Exemplary in that Place, than they can be pretended to be amongst Us here.

SIR,

I cannot but with great Concern Acknowledge, that Your Pulpits are more earnest in Recommending Practical Piety than Ours, notwithstanding the Youth of those who generally fill 'em. *Our Master* entertains us of late with such Arguments and Concessions about Christianity, that Infidels seem rather encourag'd than convinc'd by his Reasonings. One while he confesses the Souls of Brutes to be Immaterial, and anon he

he ſuppoſes ſome hidden unreveal'd Decree of the Deity for their Annihilation at Death; and yet again argues from the Immateriality of an Human Soul, that the ſame is neceſſarily Immortal, and *muſt* endure to Eternity. Theſe, and ſuch like Diſcourſes from the Pulpit, fill the Coffee-houſes about Us, upon *Sunday* Evenings, with many Wild Diſputes concerning a future ſtate: And in truth, the Deans Sermons, together with three of his *Old Friend*'s, viz. *One*, concerning the *Temporary Duration of Hell-Torments*; and to prove, that God is not oblig'd to fulfill his Threatnings, but that, on the contrary, it may be for his Honour to be better than his Word: A *Second*, concerning the *Concealment of a Man's Chriſtianity* under a Mahometan or Pagan Government, rather than diſturb it: And a *Third*, concerning the *Perfection of True Wiſdom (if a Man can hit it) in the Practice of an appearing freedom and openneſs, with a Reſolute Reſervedneſs, as*

little appearing as is poſſible: Theſe, I ſay, have given ſuch Subjects of Diſcourſe to the Youth of this Place, that 'tis ſcarce Imaginable how much the Number of the Pretended Wits and Atheiſts is of late encreaſed.

But Sir, the informing you in theſe Particulars was not the Deſign of this Letter; tho I could not forbear Complaining of the Decay of Religion, to You, whoſe Prayers may aſſiſt to ſtop it, and to beg of God the Forgiveneſs and Reformation of thoſe, who occaſion or promote it. What I intend by this Paper, is, to ſhew my Duty and Filial Regards to my Mother Univerſity, by making a ſhort Obſervation, or two, upon the 7th Page of our Dean's *Satyr*, on the Proceedings about *Mr. Bingham*'s Sermon.

I ſhall not preſume to venture upon any Argument about the Opinion Cenſur'd. *My* Re-

Reverence for your Knowledge in these *Matters*, and the Application of my Studies another way, do expresly forbid it.

That which I here offer to your Consideration must be agreed proper to the Profession I am now engag'd in, *viz.* An Essay, to prove, that the *Vice-Chancelour*, *Bp. of Oxford*, and *Heads of Houses* there, have not incurr'd any *Premunire*, or other danger, to themselves, or the University, in their late procedure about the Sermon above-mention'd: And (to tell you my Opinion freely in this matter) if the Dean's *Divinity* be no better than his *Law*, I think him deeply engag'd to the Legislative Power, which took away the *Writ de Hæretico Comburendo*. He is pleas'd to insinuate, That you ought to have advis'd with men of Skill, how far your Irregular and Unstatutable Proceeding might affect you. I take the thing to be so very plain, that you needed no Consultation with *Lawyers* be-

before-hand, nor afterward neither. But, ſince the menaces pronounc'd have proceeded from a Perſon, whoſe Station and Converſe ſuppoſe him adviſ'd by men of Skill, *Some*, on your behalf, have conſider'd the matter; and I find the *Templars* to ſmile at the Deans Preſumption, in pretending to impoſe on the World (eſpecially on his Neighbours, the men of the Law) a *Proviſo*, in an Act of Parliament, which ſtands repeal'd by a ſubſequent Act; and upon which Repeal the greateſt miſcarriages of the Laſt Reign are Founded. For, in truth, the Suſpenſion of the *B. of London*, and the Buſineſs of *Magdalen-Colledge* were no miſcarriages, but upon that ſuppoſal, *viz.* That the Act in the Firſt of *Elizabeth*, erecting an High-Commiſſion-Court, was a New Law; and that therefore being repeal'd, any the like Commiſſion was Illegal. Thus, I am ſure, the Opinions and Complaints ran, before, and at the Arrival of his Preſent *Majeſty*.

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It is not eaſie to imagine from whence he could have receiv'd this Notion, unleſs it were from *Bp. Cartwright*'s Book, who for his own Juſtification, maintain'd that Law to be but Affirmative of the Old Common Law of *England*. And yet even that Suppoſition, were it true, would not anſwer the Deans Purpoſe, as will appear by and by.

I believe, You Sir, who are a good man, will be apt to think, that it Savors ſtrongly of Prevarication to Print part of a Clauſe, and omit the moſt material words in it, which are plac'd in the midſt of the Paragraph, and could not well be overlook'd, but by one that was reſolv'd to overlook 'em, becauſe it was for his purpoſe to do ſo. Yet this litte Piece of Art the Dean has ſtoop'd to, as you ſhall ſee preſently: which is the more remarkable, becauſe he has Printed the Words of the Act in a different Character; which, amongſt ingenuous Perſons, I think, ſuppoſes a Literal Recital. This

This way of Dealing I confeſs, as odd as it is, is not wholly without a Precedent, (whether it will warrant or juſtify our Maſter I ſhall leave you to determine,) but he has the Honour of following the example of a *Reverend Prelate*, who upon a certain occaſion thought fit to launch out of his Profeſſion, and argue a Law-Point: to prove his Argument he quoted a Charter, but was pleas'd to repeat only half the words of the ſentence, and then ſtop't ſhort, omitting theſe, *Salva Perſona noſtra, Regina noſtra, & Liberis noſtris, donec emendatum fuerit ; & quandocunque Emendatum eſſet, intendent nobis ſicut prius : Matthew Paris* can give you the whole in King *John's* Reign ; but the miſchief is, the latter words, if inſerted, wou'd have ſpoil'd the force of that inference for which the Quotation was us'd, and we are not to expect from *either of 'em* that they ſhou'd *every day* anſwer their own Arguments. This Practiſe is too often obſervable in the Diſ-

Diſcourſes of Thoſe, who, to ſhew their Reading, endeavour to fetch Arguments from Profeſſions, in which they were never Educated, or not ſufficiently Studied.

Sir, I muſt beg you, not to conſtrue this Reflection as general: For it muſt be acknowledg'd, that Your Gown doth afford many inſtances to the contrary; and particularly, the Univerſal Learning, and apparent Sincerity of the great *Biſhop of Worceſter*, is a notorious exception to theſe Remarks. He muſt be own'd to have read more of our Law-Books than, perhaps, any man that is not a Lawyer; and to have employ'd what he has read Knowingly and Fairly. But as 'tis plain our Dean has no pretence to the Firſt Part of this Character, ſo whether he has any to the Latter, or not, you are to judg upon what follows.

The Caſe is thus.

A Sermon is Preach'd at *Oxford*, in which there is a Paſſage complain'd of, as giving occaſion of Offence. The Vice-chancellor Convenes ſeveral Heads of Houſes, amongſt which were more than ſix Doctors of Divinity. They Judg, Declare and Determine theſe Propoſitions (that there are *Three Infinite Diſtinct Minds and Subſtances* in the Trinity; and that the Three Perſons in the Trinity are *Three diſtinct Infinite Minds* or *Spirits*, and *Three Individual Subſtances*) to be Falſe, Impious, and Heretical, diſſonant, and contrary to the Doctrine of the Catholick Church; and eſpecially to the Doctrine of the Church of *England* publickly receiv'd. *Wherefore* they do Command and publickly Enjoyn all and ſingular, the Perſons committed to their Care, not to publiſh for the future any ſuch Tenet in their Sermons, or otherwiſe.

The

The Queſtion now, upon this Caſe, is, Whether the *Vice-Chancellor* and Heads of Houſes have been guilty of any Crime, according to the Laws of this Realm, either Eccleſiaſtical or Civil, or by the Statutes of the Univerſity?

I ſay, that the Negative is plain. For, firſt, this is not a *Judicial* Proceeding, in order to puniſh the Perſon who had publickly maintain'd theſe Propoſitions, but a Declaration rather of their Opinion by way of Caution, to the Members of the Univerſity under their Care: The *Wherefore*, in he Cloſe, doth plainly ſhew their honeſt and juſtifiable intent and deſign. And no man can have the Forehead to aſſert, that Twenty Men may not deny the Notion in Debate to be true, with as much Freedom, by our Law, as Two or Three may affirm it. Nay, if it was their Judgment and Opinion, as undoubtedly it was, the Morals even of a Lawyer will aſſure the Dean, that it was

their Duty to declare ſo, in order to prevent the Growth of the ſuppos'd Error, or Hereſy among thoſe committed to their Charge. The Judgment of Univerſities hath been Frequently and Legally declar'd upon Leſs Occaſions, even upon the Printing of Pamphlets, tho out of their Precincts, and by Perſons not under their Care. Their Power hath, with Allowance, been extended to forbid the Reading of Erroneous Treatiſes; and how comes it to be a Crime in them then to Cenſure, what is publickly Preach'd before them, by One of their Own Members?

But ſupoſing it to be a *Judicial* Proceeding; yet their Statutes are their Warrant for it. The plain words of which are, *Hæretici, Schiſmatici, & quicunq; alii minus rectè de Fide Catholica & Doctrina vel Diſciplina Eccleſiæ Anglicanæ ſentientes, uſq; tam Conciones quam Libri quibus maleſanæ opiniones propagantur cohibeantur.* And this is intruſted *Judicio Vicecancellarii, aſſidentibus Ipſi Præfectis in Ordinario ſuo Conventu.* Thus runs the Statute, *de Autho-*

Authoritate & Officio Vice-Cancellarii. There is another Statute as to Sermons, and that runs thus, *Siquis pro Concione aliqua, intra Universitatem ejuſve Præcinctum habita quicquam doctrinæ vel diſciplinæ Eccleſiæ Anglicanæ publice receptæ diſſonum aut contrarium protuerit, ſive protuliſſe ab ipſo Vice-Cancellario ſuſpectus, vel alio aliquo rationabilem ſuſpicionis Cauſam afferente delatus fuerit;* the Vicechancellor may thereupon proceed, *adhibito Conſilio Sex aliorum S^tæ. Theologiæ Doctorum (quorum Unus ſit S^tæ. Theologiæ Profeſſor Regius, ſi concioni interfuerit.)* There is not a ſtep they have taken in this Affair, which is not according to the Power granted to 'em in theſe words. And I wonder therefore what the Dean means by reproaching their Proceedings as *Irregular* and *Unſtatutable*. There ſeems to be a Fate upon him in miſ-underſtanding and miſ-repreſenting every thing that carries the Name of a Law; for he deals juſt as skilfully, and fairly with theſe Local Statutes, as he does afterwards with thoſe of the Realm.

If

If then these Statutes of theirs are valid, they are an Ample Warrant for what they have done: And Valid they are, unless they are contrary to the express known Laws of the Realm, which I shall prove 'em not to be immediately In the mean Time, supposing there were an Error in their Proceedings, it is but the Error of a Judge at most, which is never Criminal by any Law in the World (unless Corruption attend the Sentence) where the Person and the subject Matter are within his Jurisdiction. Now, in both Respects, That is the Case here. 'Twas a Member of the University that maintain'd the Proposition censur'd, 'twas in a Sermon preached before the University. The subject matter of the Words relates not to the Temporal Government, but merely to an Opinion in Religion, to an Article of Faith: And it must be agreed, that Sermons before them, and the Doctrines deliver'd in those Sermons, are under their Cognizance. Now supposing the Censure

to

to be a *Miſtake*, no Man of ſenſe but the Dean, will pretend that this miſtake is a *Crime*: It only gives Cauſe of Appeal to ſome Superior Judge, in Caſe the Conſtitution allows one; as Ours, both in Civil and Eccleſiaſtical matter, doth in moſt Particulars.

There are but few Caſes of any kind or Nature whatſoever, where the Law hath impowr'd a Final Determination in the firſt Inſtance: Even in Colledges and Univerſities there are Viſitors, and in moſt Caſes, Appeals from the firſt Order or Sentence. Mankind doth ſo generally agree this to be reaſonable, in conſideration of our obnoxiouſneſs to Error, that Appeals are deem'd Remedies approv'd by the Law of Nature; and in this, Divines, Canoniſts, Civilians, and Common-Lawyers do all agree: And, if ſo, with what Colour can the Dean inſinuate, that this Proceeding hath brought either the Perſons concern'd, or the Univerſity, into any danger, ſuppoſing it contrary

contrary to the Laws of the Realm.

The next thing to be conſider'd, is, whether any Law of the Realm doth controul or over-rule this matter?

The Dean ſays, that ſuch Declarations are not fit to be intruſted with any Body of Men leſs than a National Synod. I ſhall not diſpute about Convenience; tho, with ſubmiſſion to better Judgments, Our Conſtitution can hardly admit of any Alteration, but for the worſe. But the queſtion is how the Law ſtands?

The Objection is from the 1ſt of *Eliz.* Cap. 1. Upon which the Dean ſays. We find *the power to order, determine, or adjudge any matter or Cauſe to be Hereſy*, reſtrain'd onely to *ſuch as heretofore have been determin'd, order'd or adjudg'd to be Hereſy by the Authority of the Canonical Scriptures, or by the firſt Four General Councils, or by any other General Council,*

cel, wherein the ſame was declar'd Hereſy by the Expreſs and plain Words of the ſaid Canonical Scriptures; or ſuch as hereafter ſhall be order'd, judg'd, or determin'd to be Hereſy, by the High Court of Parliament of this Realm, with the aſſent of the Clergy in their Convocation. This is his Quotation: Then he goes on thus, And if the King could not grant a greater Authority than this to his High Commiſſioner for Eccleſiaſtical Affairs, it is not likely that any other Body of Men have it. And my Lord *Coke* ſays, That this is a direction to others, eſpecially to Biſhops, in their adjudging Hereſy, 3 *Inſtit.* pag. 40. *And how they have obſerv'd this Law in their Decree, they had beſt conſider.*

To which I anſwer; That, were this Law in force, and did it concern them, yet for the Reaſons above mention'd, 'tis no more than an Erroneous Judgment, as we have ſeen many on the 25 *E.* 3. and revers'd with abhorrence; and yet the Judges not deem'd offenders, becauſe they were not ſo Wiſe as

their Superiors, who were of another Opinion. But his Emphasis lies on the last words, *They had best consider how they have observ'd that Law.* You, Sir, know best, whether the Position be declar'd Heresy by any of those Councils: But, I'm sure, I know, that there is no such Law in force; and, if there were, yet it concerns not this matter. First, It no ways concerns this Procedure, but only a Legal Process upon a Person for Heresy, in order to his being condmn'd, and deliver'd over to the Secular Power, to be burn't. In the next place, it concerns only the High-Commissioners, and none else; it was not intended to oblige even the Bishop of a Diocese in his Ordinary Proceeding. 'Tis true, *Coke* says, That it may serve for a good Direction to Others, more especially to a Diocesan, being sole Judge in so weighty a Cause; but he doth not say it obliges him, nor can He, or any body else pretend it does: much less doth *Coke* say, that it extends to a

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Vice-Chancellor's Government of the Univerſity, with the Aſſiſtance of the Heads of Houſes, or Doctors of Divinity: Neither Dioceſans nor Univerſities are mention'd or intended, as appears by the whole Contexture of the Act.

But ſuppoſe the Act were Directory, nay, Compulſive upon a Dioceſan (which 'tis not) doth it follow that the Direction extends to Univerſities alſo? The meaning of a Law is, to be extended no further than the Words of it, and not ſtrain'd, to take in Parallel-Caſes and Remote Conſequences. Then, conſider the Reaſon of the thing; May not the Univerſity be allow'd to cenſure a Member for Heretical Words, tho they ſhould not be ſuch as contain'd Hereſy condemnable by the Ordinary? May they not caution againſt a Doctrine as Heretical, for which the Ordinary cannot Sentence in order to Death? The Puniſhment of Hereſy at the Time, when this Statute was in force, was Fire: Suppoſe the Biſhop oblig'd by this Law now, yet he

could not puniſh ſuch Hereſy as was within it, but upon a contumacious Adherence of the Offending Party to his Opinion. Do's it follow from thence, that the *Univerſity* may not Cenſure other Words, which do not ſtrictly come within the Statute, as Impious and Heretical? Nor reprimand one of her own Members for uſing 'em?

But this is a Debate upon Suppoſitions only, and thoſe utterly falſe. For *Coke* himſelf tells us, in the Firſt words of the very Sentence quoted by the *Dean*, that the Act extended only to the High-Commiſſioners, which were appointed by the King in purſuance of it. So that if the *Dean* had Printed the whole ſentence, as it lies in my Lord *Coke*, he would not have been capable of raiſing ſo much as the ſhadow of an Argument from it. How this agrees with the Common Rules of ſincerity; the *Dean*, who underſtands how to reconcile every thing to every thing, may pleaſe to tell us; for I dare ſay, no body elſe can.

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However, take it again as he would have it; and let us ſee what follows. Becauſe this is a *Direction* to Biſhops in their *Dioceſes* (whereas *Coke* only ſays, *It may ſerve* for a good *Direction* to 'em, in ſo weighty a Cauſe; and ſo, That's not very fairly quoted neither) becauſe this is a *Direction* to the Ordinary; therefore, What! Therefore, you had beſt conſider, how You have obſerv'd that Law, which does not concern You! O the Power of No-Logic and No-Law, met together!

As he clips *Coke's* Opinion, ſo he maims the very Paragraph of the Act of Parliament, upon which he founds his imply'd Menace. For, as it lies in the Act, it is a Reſtraint of the Power, which the High-Commiſſioners were to have, by Vertue of the King's Letters Patents, and of that Act. The words are, *by Vertue of this Act*, and theſe he omits. Now this Proviſo implies, that, if the Proviſo had not been added, the General Purview had given them a greater

greater Latitude and Power; for otherwiſe the Proviſo had been uſeleſs. The General Purview, giving a Power to exerciſe Eccleſiaſtical Juriſdiction, it muſt be ſuppos'd, that Eccleſiaſtical Juriſdiction might declare and puniſh other Hereſys, than what are mention'd in the Proviſo; and the Proviſo's being reſtrain'd only to thoſe Commiſſioners, ſhews, that the Law-Makers thought other Hereſys might be declar'd and puniſh'd, than what are there mention'd: Tho they would not permit Theſe Commiſſioners to declare any other.

But further, If there be a Repeal of the Clauſe which enacts the High-Commiſſion-Court, (as there is by the 17 *Car.* 1. *Cap.* 11.) the Proviſo, in reſtraint of theſe Commiſſioners, is, and muſt be Repeal'd too. This Natural Reaſon and Common ſenſe might have taught the *Dean*, without his reſorting to the Temple Library, or conſulting his Men of Skill about the matter. For either that power of Erecting an High-Commiſſi-

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on-Court was in affirmance of the Common-Law, or introductive of a New Law. If the former, as was Argu'd in the laſt Reign; yet, even then, this *proviſo* being reſtrain'd to ſuch Exerciſe of Eccleſiaſtical Juriſdiction by Letters Patents by Vertue of that Act; the ſame can never extend to other Ordinary Acts, or Exerciſe of Juriſdiction, without a ſpecial Commiſſion, becauſe the words have ſo reſtrain'd it. And if the Power of that Court were New, and Created by that Act, as all the *Dean's* Lawyers do, and muſt contend; then the Court being gone, the *Proviſo* in reſtraint of it is vaniſh't too. So that at laſt here is no 1 *Eliz.* cap. 1. left for the *Univerſity* to conſider; and the *Dean* has dealt with Them, as the World often has with Him; has thrown away his Advice upon 'em to no purpoſe.

It is News to Me, Sir, and will be ſo to the World, I believe, what you tell me, with regard to the *Reprimand*, ſuppos'd to have been

been given lately to the *University*. It has been talk'd very confidently of here in Town, as a thing past Dispute, and the *Dean*, I assure you, has taken Heart upon't, and (according to his way) defi'd all the World more than once from the Pulpit in the strength of it. And yet you send me word, That *it does not at all appear to the Meeting of the Heads of Houses, or to the University, that any such* Reprimand, *so much talk't of here, has been sent:* And this, you say, I may depend upon, as certain.

You surprize me, Sir, and I believe what I am going to say, will as much surprise You. You tell me, that it is taken for granted at *Oxford*, that the Judges of *England* have given their Opinions in Prejudice of the *University*, and their Proceedings.

You may be assured, that this Report, as loud and as largely spread as it is, is scandalous and groundless. You may be assur'd of it, I say, both from the known Law of the Realm, and from the known Honour and Probity

bity alſo of the Perſons filling thoſe Places. For by our Law, the Judges are not to give any Opinion out of Court, upon any Matter, that may poſſibly come before 'em in Judgment; and if they do, 'tis an Irregularity in their Behaviour; an Indecency, ſeldom committed, but never own'd. For ſuch Opinions, being Extrajudicial, are not upon their Oaths; and are neither obligatory to themſelves, nor valu'd by others. 'Tis a Reproach upon the King to ſuppoſe their Opinion ask'd in this caſe. Many of 'em, I am ſure, when requeſted by *Miniſters*, upon greater occaſions than this, have refus'd to give it, as in Juſtice and Honour it became 'em; and would therefore, if they ſhould have been ask't upon this, have certainly deny'd it. *Shipmony*, and *Non-obſtante's*, and *Quo-warranto's* had ſome ſuch Preliminary Interrogatories about Opinions; but Experience tells us, that the Nation would not bear it: Beſides, Theſe Gentlemen now on the Bench are not quite ſo Dependent on the Crown, as the *Beneplacito* Men were.

'Tis true, they are bound to adviſe the King, when requir'd: But that cannot be concerning an Act already done by the Subject, whether

Lawful or Criminal? For in these Cases the King hath his Serjeant, his Attorny, Soilicitor, and other Counsel, Learned in the Law, to advise with.

You may depend upon't therefore, that nothing of that Nature can have been done or attempted, as peremptory as the *Dean*'s Creatures have been upon this occasion.

So that, upon the whole, I think you need not sneak to any *Socinian*, *Tritheist*, or *Latitudinarian* whatever, upon the account of the evil Consequences that may attend your Conduct in this matter. Fools and Cowards may blame you for having gone so far; but with Wise and Honest Men, your only Fault will be, if you go no farther.

Sir, I might enlarge upon the *Powers* and *Priviledges* of the *University*, in respect of declaring Doctrines to be Erroneous; and I could find Materials enough from good Histories, Reports, and Journals, and those approv'd by Lawyers, for that purpose: But at present, I think it enough to have answer'd the *Dean*, till he shall be pleas'd to give further occasion by Writing about Law Points again.

I am, Sir,

Feb. 3. 1695. Your most humble Servant.